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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

WASHINGTON, A. & MT. V. RY. CO. *v.* TRIMYER.

March 10, 1910.

[67 S. E. 531.]

1. Carriers (§ 317*)—Injury to Passenger—Failure to Stop Train—Prior Similar Acts.—In an action for injuries alleged to have resulted from defendant's failure to stop its train at the intersection of another railroad, as was its duty to do, evidence is admissible that on prior occasions defendant had failed to stop its trains at this place.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1302½; Dec. Dig. § 317.* 5 Va.-W. Va. Enc. Dig. 302, et seq.]

2. Carriers (§ 280*)—Duty and Liability to Passengers.—A carrier is liable for the slightest negligence resulting in injury to a passenger, and the utmost care and diligence of cautious persons to prevent such injury is imposed by law.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1087; Dec. Dig. § 280.* 2 Va.-W. Va. Enc. Dig. 700, et seq.; 4 id. 244; 14 id. 195.]

3. Carriers (§ 300*)—Liability to Passengers—Effect of Contract between Carriers.—A contract between carriers as to the stopping of trains at an intersection of their roads cannot control or affect the degree of care which a carrier owes to its passengers to avoid collisions.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1211, 1212; Dec. Dig. § 300.* 2 Va.-W. Va. Enc. Dig. 711.]

4. Carriers (§ 317*)—Injury to Passengers—Cause of Injury—Evidence.—In an action against a street car company for injuries to a passenger by a collision between a car and a locomotive on a steam railroad at a crossing, a contract between the companies as to the stopping of trains on approaching the crossing is admissible on the question of whose negligence was the proximate cause of the accident, and whose the remote cause.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1295; Dec. Dig. § 317.* 10 Va.-W. Va. Enc. Dig. 376.]

5. Trial (§ 82*)—Objection to Evidence.—Where evidence was admissible for any purpose, a general objection to its introduction is properly overruled.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 194; Dec. Dig. § 82.* 5 Va.-W. Va. Enc. Dig. 349; 14 id. 414.]

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

6. Appeal and Error (§ 1053*)—Review—Harmless Error—Rulings as to Evidence.—Where the court directed the jury that only a specified portion of a contract read in evidence should be considered, and no prejudice appears, the error of reading the entire contract is immaterial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4180-4182; Dec. Dig. § 1053.* 1 Va.-W. Va. Enc. Dig. 592, et seq.; 14 id. 92.]

7. Carriers (§ 320*)—Collision at Railroad Crossing—Negligence—Question for Jury.—Whether a street car company used proper care to avoid a collision at a railroad crossing is a question for the jury, and it is error to instruct that negligence is presumed from a failure to stop the car at least 20 feet from the crossing; there being no guards, or other safety devices, at the crossing.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1211, 1323; Dec. Dig. § 320.* 7 Va.-W. Va. Enc. Dig. 730; 10 id. 414, et seq.; 14 id. 564, 774.]

8. Appeal and Error (§ 1033*)—Harmless Error—Error Favorable to Appellant—Instructions.—A judgment against a street car company will not be reversed for an instruction imposing on defendant a lower degree of care in behalf of its passengers than the law requires.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4056; Dec. Dig. § 1033.* 1 Va.-W. Va. Enc. Dig. 600, et seq.; 14 id. 97.]

9. Carriers (§ 321*)—Collision at Railroad Crossing—Actions for Damages—Instructions.—In an action against a street car company for injuries to a passenger in a collision at the crossing of a steam railroad, defendant requested an instruction that "even if defendant's employees were negligent, if notwithstanding such negligence the accident would not have occurred but for the negligence of the employees of the steam railroad company, and if such employees could, with the exercise of due care, have discovered the presence of defendant's car on the crossing in time to have avoided the accident, and that the injuries complained of resulted from such neglect, such neglect must be considered the proximate cause of the accident, and that of defendant the remote cause." Held, that the instruction was properly refused, as it does not present a case of the intervention of the act of a responsible agent, to whose misconduct the injury could be referred as a proximate cause, so as to render the original negligence of defendant company a remote cause or mere condition of the accident.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. § 1326; Dec. Dig. § 321.* 10 Va.-W. Va. Enc. Dig. 376, et seq.]

Error to Circuit Court of City of Alexandria.

Action by John H. Trimyer against the Washington, Alexan-

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

dria & Mt. Vernon Railway Company. Plaintiff had judgment, and defendant brings error. Reversed.

Moore, Barbour & Keith and Jas. R. & H. B. Caton, for plaintiff in error.

C. E. Nicol, for defendant in error.

GRINELS *v.* DANIEL.

March 21, 1910.

[67 S. E. 534.]

1. Navigable Waters (§ 46*)—Riparian Rights—Licenses.—The owner of a tract of land fronting on the Rappahannock river leased to another a portion thereof, situated on the beach, to be used by the lessee for a steamboat wharf. Held, that the lessor did not part with his riparian rights to any greater extent than was necessary to enable the lessee to erect the wharf and use it for the purposes for which it was built, and the lessee had no right to erect between low-water mark and the line of navigability houses for the carrying on of any business not connected with the conducting of the wharf.

[Ed. Note.—For other cases, see Navigable Waters, Dec. Dig. § 46.* 9 Va.-W. Va. Enc. Dig. 159; 13 id. 692.]

2. Navigable Waters (§ 43*)—Shore Lands—Title.—Title to land between low-water mark and the line of navigability on the Rappahannock river is in the commonwealth, but between low-water mark and the line of navigability the riparian owner has the right of access to the navigable part of the river, the right to make a wharf or pier, which right is property, and can only be taken in accordance with law.

[Ed. Note.—For other cases, see Navigable Waters, Cent. Dig. § 257; Dec. Dig. § 43.* 10 Va.-W. Va. Enc. Dig. 342 et seq.; 14 id. 760; 2 id. 591.]

3. Navigable Waters (§ 46*)—Riparian Rights.—Where the owner of land fronting on the Rappahannock river gave another permission to erect between low-water mark and the line of navigability houses for the purpose of barreling oysters, he did not have the right to use or occupy the houses for any other purposes.

[Ed. Note.—For other cases, see Navigable Waters, Dec. Dig. § 46.* 9 Va. W. Va. Enc. Dig. 159.]

4. Fish (§ 10*)—Licenses—Construction.—An assignment by the state under Code 1904, § 2135b, of land for oyster-planting purposes, did not confer upon the assignee the right to erect houses, and use them to carry on a mercantile business.

[Ed. Note.—For other cases, see Fish, Dec. Dig. § 10.* 10 Va.-W. Va. Enc. Dig. 62, et seq.]

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.